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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan	)	CC Docket No. 97-137

Reply Affidavit of Theodore A. Edwards on Behalf of Ameritech Michigan

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REPLY AFFIDAVIT OF THEODORE A. EDWARDS ON BEHALF OF AMERITECH MICHIGAN

I, Theodore A. Edwards, being first duly sworn upon oath, do hereby state as follows:

I. Introduction

1. I am the Vice President of Sales for Local Exchange Carriers at Ameritech Information Industry Services ("AIIS"), the business unit of Ameritech Corporation responsible for acting as a wholesaler of local exchange services, interconnection, unbundled network elements, and other products to competitive local exchange carriers ("CLECs").

2. My reply affidavit responds to the Comments[1/] and affidavits[2/] submitted by the

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1/ Comments and other legal submissions will be cited herein as, for example, "AT&T Br., p. __."

Department of Justice ("DOJ"), the Michigan Public Service Commission ("MPSC"), CLECs, and others in response to Ameritech Michigan's application for authority to provide in-region interLATA service in Michigan.

3. In general, the comments and affidavits focus on only a few of the fourteen Checklist items that I discussed in my initial affidavit. The DOJ and MPSC agree that Ameritech fully satisfies most Checklist items. The MPSC has concerns about only three items (local transport, 911 service, and performance reporting and measures for wholesale support services) and the DOJ has concerns about only four items (interconnection, local transport, local switching, and operations support systems). I will discuss some of the local transport issues in this affidavit, but the remaining MPSC and DOJ issues are covered in the reply affidavits of Messrs. Kocher, Mickens, Rogers, and Mayer.

4. Ameritech's competitors, of course, raise a number of claims on nearly every checklist item. Many competitors blatantly attempt to relitigate before the FCC issues that have already been arbitrated -- and resolved in Ameritech's favor -- in Michigan and several other states. In some cases they even complain about provisions in their interconnection agreements that were voluntarily agreed-upon by the parties. When they are not reviving such settled issues, the commenters attempt to expand the requirements of the Checklist through strained readings of Section 271.

[2/](...continued)

[2/] Affidavits will be cited by the name of the affiant, for example, "Falcone/Sherry Aff., ¶ __."

5. Such repetitive claims are to be expected. Indeed, no matter how well Ameritech performs or how thorough its interconnection agreements, competitors will always have the incentive to raise any issue, no matter how frivolous, in hopes of delaying Ameritech's interLATA entry. When viewed in light of the arbitration decisions and controlling legal standards, however, none of the commenters' arguments has merit and none should preclude the Commission from finding that Ameritech currently provides as a legal and practical matter all fourteen Checklist items.

6. My reply affidavit is organized as follows. In response to claims by opponents that competition is not thriving in Michigan, I will begin by providing data to update the Commission on the exploding demand for and use of Ameritech's interconnection products, unbundled network elements, and resale services. Next, I will respond to claims regarding the most-favored nation ("MFN") clauses in Ameritech's interconnection agreements and general allegations regarding the Bona Fide Request ("BFR") process. I will then discuss allegations related to specific Checklist items insofar as they relate to whether the product or service being provided satisfies the Act and Commission Regulations.

II. Competitive Use of Checklist Items

7. Many commenters assert that there is not enough "actual" or "effective" competition in Michigan to justify granting Ameritech's application. Starkey Aff., passim; Shapiro Aff., passim. The following figures, however, put the lie to those claims by demonstrating that

competition in Michigan is, in fact, exploding. Since April 30, 1997, CLECs in Michigan have ordered or begun using:

- 5,327 additional end-office interconnection ("EOI") trunks, an overall increase of 36% (regionwide, CLECs purchased 14,392 additional EOI trunks, a 34% increase);
- 3,702 additional unbundled loops, an overall increase of 16% (regionwide, CLECs purchased 6,878 additional loops, an 18% increase); and
- 30,042 additional non-Centrex resale lines, an overall increase of 363% (regionwide, CLECs purchased an additional 96,151 non-Centrex resale lines, a 173% increase).

8. These increases in just two months demonstrate the continuing growth of local competition. Moreover, AT&T has "ramped up" its entry so that it is now placing more than 5,000 orders on many days. And AT&T recently "forewarned" Ameritech to expect 8,000 to 10,000 orders per day within the next week or so -- a warning it fulfilled by placing approximately 10,000 resale orders on June 26, 1997. These actions demonstrate starkly show that Ameritech's wholesale products and services are being used and that the doors to competition are open.

III. Most Favored Nations Clauses

9. As I explained in my initial affidavit (¶¶ 14-17), the MFN clauses in Ameritech's interconnection agreements give competing carriers the right to purchase any interconnection,

unbundled network element or combination, or service at the same rates, terms and conditions included in an approved agreement between Ameritech and another carrier in the same state. A few commenters, however, now claim that the MFN clauses in the Brooks Fiber, MFS and TCG agreements do not actually entitle those carriers to choose any type of individual interconnection, element, or service in another agreement or to obtain any portion of another agreement that does not relate to something already addressed in the initial agreement. MCI Br., p. 9; TCG Br., p. 19 n.45; CompTel Br., pp. 7-10. Commenters also argue that it is unclear what MFN rights exist or are enforceable in light of the Eighth Circuit's stay of the FCC's regulations implementing the MFN section of the Act (§ 252(i)). Sprint Br., pp. 18-20; MCI Br., p. 10 n.14.

10. First, it is somewhat surprising that these competitors read the MFN clauses in the Brooks Fiber, MFS and TCG agreements so narrowly.[3/] These clauses plainly entitle those carriers to obtain <u>any</u> products or services on the same terms and conditions contained in other approved agreements. The MFN clause in the MFS Agreement, for example, provides that "At its sole option, the other Party may avail itself of the prices, terms and conditions of the Other Agreement that related to <u>any</u> of the following duties <u>as a whole</u>," (emphasis added) and then lists the generic duties of "Interconnection," "Exchange Access," "Unbundled Access," "Resale," "Collocation," "Number Portability," and "Access to Rights of Way." MFS Agreement, § 28.14. It is difficult to imagine a much more comprehensive MFN clause.

[3/] It is significant that Brooks Fiber and MFS, the latter of which has already invoked its MFN rights in every Ameritech state but Michigan, raise no complaints about the scope or effect of their MFN clauses.

11. Second, the best evidence of the effectiveness of Ameritech's MFN clauses is that they have already been successfully invoked. MFS, for example, is modifying its interconnection agreements in four states (all but Michigan) to adopt the rates, terms, and conditions of the AT&T agreements relating to unbundled elements.[4/] Similarly, TCG Detroit has invoked its MFN clause to replace the reciprocal compensation rates, terms, and conditions in its agreement with those from the Brooks Fiber agreement. Although there were some disputes along the way, that request has been treated as effective as of the date of receipt.[5/] Thus, it is clear that the MFN clauses work and that the rates, terms, and conditions of other contracts relating to all Checklist items are available to Brooks Fiber, MFS and TCG upon request.

12. Third, Ameritech has made abundantly clear its interpretation of the MFN clauses as allowing carriers to purchase any individual interconnection, unbundled element, or service on the rates, terms and conditions of another contract.

(a) AIIS attorney Ed Wynn sent letters to Brooks Fiber, MFS, and TCG on March 14, 1997 detailing the ways in which those carriers could utilize their MFN clauses. As the letter explained, carriers can:

[4/] See, e.g., Statement in Support of Request for Approval, I.C.C. Docket No. 97 NA-016 (May 23, 1997) [Att. 1].

[5/] Letter from Ameritech's Mark Ortlieb to TCG's Jim Washington dated May 21, 1997. [Att. 2]. Thus, CompTel's second-hand complaints about Ameritech's implementation of TCG's MFN clause (CompTel Br., p. 9) are inapposite. Moreover, Ameritech can hardly be faulted for attempting, in response to the very first MFN request, to define a process that was promptly responsive to the CLEC while also being consistent with sound principles of contract administration.

(1) select any additional Interconnection Methodology, individual Network Element or Resale Service provided under any other approved Interconnection Agreement with Ameritech Michigan ("Other Agreement"), subject to the same terms and conditions under which such Interconnection Methodology, individual Network Element or Resale Service is provided under the Other Agreement; or

(2) select the terms and conditions under which an Interconnection Methodology or one or more individual Network Elements or Resale Services are provided under the Other Agreement to replace the terms and conditions under which those same Interconnection Methodologies, Network Elements or Resale Services are provided under the Interconnection Agreement with your company; or

(3) replace the terms and conditions in an entire Article of the Interconnection Agreement with the terms and conditions in an entire Article of the Other Agreement; or

(4) add an entire Article of the Interconnection Agreement containing the terms and conditions of an entire Article of the Other Agreement.[6/]

(b) Ameritech has submitted a filing with the MPSC explaining its interpretation of the MFN clauses.[7/] The MPSC has acknowledged Ameritech's position and -- contrary to MCI's assertions (MCI Br., p. 9) -- the MPSC does not appear to have any

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[6/] Mr. Wynn's letters were attached to my initial affidavit as Schedule 3. In light of paragraphs 2 and 4 of Mr. Wynn's explanation, CompTel's claim (p. 8) that the MFN clauses "allow only the substitution of terms contained in a section of another agreement, not the addition of missing elements" is clearly incorrect. Moreover, CompTel recognizes that the Brooks Fiber Agreement (§ 28.15) expressly allows Brooks to select "the prices, terms and conditions of the Other Agreement" relating to a wide range of general § 251 obligations, and contains no restriction on adding, as opposed to merely substituting, new terms and conditions.

[7/] Ameritech Michigan Submission in Response to TCG Detroit, Mich. Pub. Serv. Comm'n, Case No U-11104 (May 14, 1997) (included in Ameritech's May 21, 1997 submission, Vol. 4.1, Tab 133).

significant concerns regarding the effectiveness and scope of the MFN clauses (though, as would be expected, it will continue to monitor the implementation of those clauses). MPSC Br., p. 7.

(c) I made Ameritech's position on MFN clauses clear in my initial affidavit (¶¶ 14-17). Furthermore, my predecessor at AIIS, Gregory Dunny, has previously testified consistently with my affidavit in the Illinois § 271 Compliance Docket, I.C.C. Docket No. 96-0404. As Mr. Dunny explained, the MFN clauses do not require Brooks, Fiber, MFS, or TCG to accept rates, terms, and conditions beyond those that apply to the specific product or service they select.

> Q. If a party wanted to invoke their most favored nations clause with respect to something that's contained in another contract, and an example, unbundled network elements, does the requesting carrier have to take all of the unbundled network elements [when] utilizing their MFN clause?
>
> A. . . . They would not. They would have to take, again, the sections that would pertain to that network element. And an example might be if I had CCT [an Illinois CLEC] and CCT had an agreement to procure unbundled local loops with certain provisioning conditions, and someone else came along and negotiated . . . a lower price but they also said I would take a reduced quality or longer provisioning intervals, then if CCT said I would like that reduced price, I would say okay, we can sit down but your most favored nation language would indicate you also have to take the terms and conditions that go along with that lower price.[8/]

[8/] Illinois § 271 Compliance Docket, Tr. 518-19 (Jan. 14, 1997) [Att. 3]. Mr. Dunny's explanation also reveals the overreaching nature of CompTel's claims (p. 8) that competitors should be able to "mix and match" isolated, individual terms and conditions from a variety of contracts.

(d) The June 18, 1997 Proposed Order by the Hearing Examiner in the Illinois § 271 Compliance Docket expressly found that Ameritech's MFN clauses made all checklist items available to competing carriers, even those items not included in their agreement, through the comprehensive AT&T agreement.

> There is simply nothing wrong with the incorporation by reference of items from other contracts. This is what the MFN clause accomplishes. Incorporation by reference is sufficient from a contract law standpoint and, therefore, it is sufficient for the Commission. Pursuant to those MFN clauses, CCT, MFS and TCG may order individual network elements or checklist items out of Ameritech's approved interconnection agreement with AT&T or any other approved agreement. The AT&T Agreement includes all of the checklist items.[9/]

13. Fourth, as for the claims that the current stay of the FCC's § 252(i) regulations somehow throws this area into flux, I must point out that the Act, and therefore § 252(i), are still in place. CLECs may of course enforce their § 252(i) rights no matter how their particular MFN clauses might be interpreted. Thus, Sprint's claims that "there can be no assurance that most favored nation principles will survive either by law or by contract" and that this "should be deemed fatal for purposes of determining Section 271 compliance" (Br., p. 20) are simply incorrect. Those rights survive in § 252(i). In addition, any doubt as to the validity of the Commission's regulations should be resolved when the Eighth Circuit issues its opinion, which could happen at any time.

[9/] Hearing Examiner's Second Proposed Order, Illinois § 271 Compliance Docket, I.C.C. Docket No. 96-0404, p. 17 (June 18, 1997) ("Illinois 6/20/97 HEPO"); id., pp. 71-72 (finding that CLECs were not denied local transport when they could obtain it through MFN clauses). [Att. 4].

14. At bottom, Sprint and MCI seem to be arguing that because the FCC's § 252(i) rules are stayed, Ameritech should have to wait for the final outcome of the Eighth Circuit's review before it can be found to truly offer MFN rights. But that makes no sense, and is apparently just another tactic to stall Ameritech's long distance entry. Ameritech offers substantial MFN rights today and will continue to offer those rights in full compliance with the law.

15. Sprint also makes incorrect factual allegations about Ameritech's implementation of the MFN clauses. It begins by asserting that Ameritech "refused to accommodate Sprint's request for a comprehensive MFN provision in its interconnection agreement arbitration." Sprint Br., p. 19. Although Sprint gives no citation for its claim, it may be complaining that Ameritech did not agree to include language in the parties' interconnection agreements that would have allowed Sprint to pick and choose an individual rate, term, or condition from another contract. Ameritech described the many problems with this proposal in its arbitration testimony -- including the difficulties that would arise in allowing carriers to pick and choose individual rates, terms, or conditions from other agreements -- and the MPSC declined to adopt Sprint's position. Sprint/Ameritech Michigan Decision of Arbitration Panel, M.P.S.C. Case No. U-11203, p. 22 (Dec. 12, 1996) (adopted in final arbitration decision, p. 2).

16. Sprint also asserts that Ameritech "at one time interpreted its MFN clause to deny TCG the ability to purchase individual network elements from other interconnection agreements." Sprint Br., p. 19. This too is wrong. Sprint bases its claim on TCG's January 9, 1997 Comments in the Michigan § 271 Compliance Docket (included in Ameritech's May 21, 1997

submission, Vol. 4.1, Tab 71), but those Comments make no claim of any refusal by Ameritech to honor an actual MFN request. At best, footnote 14 of those comments (repeated almost verbatim in TCG's Brief, p. 19 n.45) sets forth TCG's general reading of the MFN clause prior to Mr. Dunny's Illinois testimony, Mr. Wynn's MFN letter, the Illinois Hearing Examiner's Proposed Order in the Illinois § 271 Compliance Docket, and my initial affidavit in this case. Also, as noted above, Ameritech has fully implemented TCG's MFN request for reciprocal compensation.

17. In short, the facts regarding Ameritech's MFN clauses are straightforward: the clauses themselves give carriers access to the full panoply of products and services in other interconnection contracts, including the comprehensive agreements with the large IXCs and Ameritech's position on the scope of these clauses has been spelled out in Mr. Wynn's letters, an MPSC filing, my initial affidavit, and testimony by Ameritech in the Illinois § 271 Compliance Docket. That position has also been accepted by the MPSC and the ICC Hearing Examiner. Further, Ameritech's position is consistent with Section 252(i) of the Act, which is still in effect while the FCC's regulations are stayed.

IV. Bona Fide Request Process

18. Some commenters, particularly MCI, take issue with Ameritech's use of a BFR process to evaluate requests for new methods or points of interconnection, new unbundled network elements or combinations, or customized services not otherwise provided as standard products. See, e.g., AT&T Br., p. 15; MCI Br., p. 31. Generally speaking, they contend that BFRs

should not be required for several products, including OS/DA custom routing and combinations of unbundled network elements. Sanborn Aff., ¶¶ 25-30; Puljung Aff., ¶¶ 23-26. More specifically, MCI claims that Ameritech engages in "overuse" of the BFR process and that the process "is generally appropriate only when there is a question as to technical feasibility." Sanborn Aff., ¶ 25. MCI also asserts that because it requires BFRs in certain instances, Ameritech cannot satisfy the Checklist. Id., ¶ 11.

19. AT&T's and MCI's purported concerns about the effectiveness of the BFR process are misplaced and represent a failure to understand the steps necessary whenever a CLEC requests a new product and/or custom arrangements. Simply put, neither Ameritech nor any incumbent LEC can instantaneously provide on a standard basis every product and service that any new entrant might want. Recognizing this fact, Ameritech has designed its BFR process to give structure and order to these requests and channel them through a single point of contact, the BFR Manager, to streamline the process and ensure that Ameritech addresses each BFR in an efficient, nondiscriminatory manner.

20. Attachment 6, a document titled "Ameritech's BFR Practice" (AM-TR-NIS-000140) describes the activities during the BFR process in more detail. For example, in the course of responding to a BFR, Ameritech may perform some or all of the following functions:

- Analyze the request to ensure Ameritech understands the request and has the information it needs to process the request, and if necessary request additional information;
- Meet with the requestor to better understand the request and/or explore options for fulfilling it;

- Ascertain whether the request is technically feasible;
- Determine whether the request can operate as a single service;
- Determine whether the requested item will interfere with the other carrier's ability to interconnect or gain access to network elements;
- Design the product to fulfill the request;
- Determine whether the request can be provided with existing facilities and equipment;
- If additional facilities or equipment are required, determine their cost; and
- Price the product or service.

These processes cannot be completed instantly upon receipt of an order for a new or custom product, which is why the BFR process is necessary. In addition, to help ensure that the BFR process is readily accessible to all carriers, Ameritech has voluntarily offered to limit a requesting carrier's liability during the first phase of the process to $2,000 per BFR, and also will quote projected processing and developmental costs applicable to the developmental phase, which will serve as a cap on these costs.

21. Issues regarding Ameritech's BFR process and timetable were arbitrated with AT&T and MCI in every Ameritech state. For MCI now to claim that the process is "an unnecessary recipe for delay" (Sanborn Aff., ¶ 25; MCI Br., pp. 26, 31) is tantamount to denying the validity of those arbitration decisions. Likewise, the OS/DA custom routing that AT&T and MCI wish to exclude from the BFR process was specifically deferred to that process by the MPSC. AT&T/Ameritech Michigan Arbitration Decision, M.P.S.C. Case Nos. U-11151/52, p. 25 (Nov. 26, 1996) [Att. 7]. MCI's claim is especially weak in light of the fact that the BFR period in

Michigan (up to 60 days) is only half as long as that approved in Illinois and other states. Moreover, for (i) a combination of standard offerings, or (ii) individual customer arrangements that do not require alterations not otherwise performed for individual customer arrangements, Ameritech will provide a price quote and availability date within 30 days, faster than is required for other kinds of requests. AT&T Agreement, Sch. 2.2; Sprint Agreement, Sch. 2.2; MCI Agreement, Sch. 2.2.

22. MCI also misrepresents the nature of the BFR process when it states that once a final BFR Quote is provided, "[i]mplementation then proceeds on whatever schedule Ameritech has determined to be appropriate." Sanborn Aff., ¶ 25. The truth is that once Ameritech provides a BFR Quote, the questions of whether, when, and how to proceed fall to the requesting carrier. The AT&T Agreement, for example, states that:

> Within thirty (30) days of its receipt of the Bona Fide Request Quote, the requesting party must either confirm its order . . . or, if it believes such quote is inconsistent with the requirements of the Act, exercise its rights under Section 28.3.

AT&T Agreement, Sch. 2.2(6) (emphasis added).

23. Specific BFR issues relating to Checklist items will be discussed below under the appropriate item. Issues regarding OS/DA custom routing are discussed in Mr. Kocher's affidavit.

V. Individual Checklist Items

CHECKLIST ITEM (i): INTERCONNECTION

A. Physical Collocation

24. MCI contends that because there allegedly is no physical collocation by a CLEC in Michigan yet, Ameritech's procedures for collocation "have not yet been fully developed and standardized." Sanborn Aff., ¶ 15. The fact of the matter, however, is that Ameritech has already provided physical collocation in Michigan to MCI itself. As Mr. Nate Davis testified, "MCI has already installed two physical collocations at Ameritech's facilities in Detroit and Ann Arbor." Davis Aff., ¶ 33. Ameritech also is converting TCG collocations to physical collocation in four offices in Michigan. Such conversions are essentially a paperwork process, and should be completed quickly. Physical collocation orders also are being processed in Michigan for, among others, Brooks Fiber, MFS, and Phone Michigan.

25. Furthermore, Ameritech has already proven its ability to furnish physical collocation to competitors, and the adequacy of its procedures for doing so, by performing such collocation in other states: TCG is physically collocated in 8 wire centers in Illinois and 1 in Wisconsin, while US One is physically collocated in 1 wire center in Illinois.

26. As for the alleged lack of procedures for physical collocation, MCI apparently has overlooked the detailed procedures defined in its own interconnection agreement -- procedures that it chose not to arbitrate. See, e.g., MCI Agreement, Sch. 12.9.1 ("Physical Collocation Space Reservation"), Sch. 12.12 ("Delivery of Collocated Space"), Sch. 12.15 ("Common

Requirements" for physical and virtual collocation), and Sch. 12.16 ("Additional Requirements Applicable to Physical Collocation"). Thus, MCI's claim that no adequate procedures are in place is baseless.

27. MCI finally contends that it is unclear whether Ameritech has the space to accommodate augmentation of CLECs' collocated equipment to serve all access lines in wire centers where they are collocated. Sanborn Aff., ¶ 17. MCI's concerns are, of course, purely hypothetical at this time. In all events, the short answer here is that Ameritech will accommodate all CLEC requests for expanded collocation to the full extent required by the regulations and interconnection agreements. The fact is that in many Ameritech offices it should be no problem to find space for CLECs to expand the capacity of their equipment. Also, given the pace of technical innovation, it seems likely that CLECs would not even need to expand their collocation space to serve all lines in an end office, as modern digital equipment can serve vastly greater numbers of lines without taking more physical space.

B. End Office Interconnection Trunks

28. MCI claims that "Ameritech has not furnished any two-way trunks to MCI despite MCI's specific requests." MCI Br., p. 26; Sanborn Aff., ¶ 18. TCG makes a similar claim. TCG Br., p. 8; Pelletier Aff., ¶ 22. MCI's misleading is wrong on three counts. First, because Ameritech and MCI did not have an interconnection agreement until very recently, two-way trunks were not an option. rather, MCI purchased trunks under the "Ameritech Interim Interconnection Arrangement" tariff, which does not provide for two-way trunks. Second, MCI

has not yet ordered any two-way trunks from Ameritech for intraLATA service. Third, while MCI has ordered two-way trunks for access traffic, Ameritech has fulfilled each of those orders.

29. In addition, despite MCI's claims (Sanborn Aff., ¶ 18), there is no significant loss of efficiency or competitiveness when one-way trunks are used rather than two-way trunks. Indeed, the use of two-way trunks complicates the trunk servicing process because traffic monitoring equipment typically monitors traffic in only one direction. Recording and billing calls made on two-way trunks is also more difficult. This is particularly important for new entrants, as an initial one-way arrangement generally facilitates service establishment and testing as well as billing accuracy and verification.[10/] The joint engineering and design considerations inherent in two-way trunks are best deferred until traffic forecasts have been stabilized and after both parties have gained experience with the simpler one-way connections.

30. As for TCG, it ordered two-way trunks without recognizing the many technical and operational difficulties that would arise in using such trunks with its collocation architecture. Ameritech has worked with TCG to address these two-way trunking issues and believes that they are now resolved. The parties' agreement is reflected in the June 17, 1997 letter from Ameritech's Warren Mickens to TCG's William Riggan. [Att. 8].

[10/] In fact, because of their simplicity and ease of administration, one-way trunks are supplanting two-way trunks in Ameritech's own internal network design.

31. Another trunking issue is raised by Phone Michigan, which claims that Ameritech "require[s] that Phone Michigan deliver traffic to their LATA tandem switching facility." Phone Michigan Br., p. 6. Phone Michigan asserts that the nearest tandem is over 35 miles away from its Flint, Michigan location and that its customers calls are forced to travel 35 miles to that tandem and back again. Id. Phone Michigan then claims that calls from Ameritech's customers are not routed in this way, but rather travel through the "Flint Local tandem" that Ameritech refuses to let Phone Michigan use. Id.

32. This claim is entirely unfounded. Foremost, Ameritech does not have a tandem switch of any kind in Flint. Thus, Phone Michigan's claims about preferential routing of Ameritech calls to a Flint Local tandem are baseless. Moreover, although Phone Michigan does have trunks to the Pontiac Access tandem it refers to, it also has established local/intraLATA trunk connections to the local Ameritech wire centers in the greater Flint market. These end-office direct trunk groups carry the vast majority of calls destined for end users -- whether of Ameritech or Phone Michigan -- served by those end offices, thereby reducing the necessity for trunking or routing of calls to Ameritech's Access tandem.[11/] Thus, it is not true that Phone Michigan's calls to Flint customers are automatically routed through the Pontiac Access tandem; rather, such routing will occur when a Phone Michigan customer attempts to call an end user

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11/ It is also worth noting that the Phone Michigan interconnection Agreement with Ameritech Michigan (§ 5.2.3) specifically states that for purposes of routing Phone Michigan traffic to Ameritech, sub-tending of Ameritech's Primary and Secondary switches (as defined in the agreement) shall be the same as the Access Tandem/End Office sub-tending arrangements Ameritech has in routing its own traffic. Thus, both carriers' calls are routed in the same way.

served by an office to which Phone Michigan is not trunked. Of course, that only makes sense; if Phone Michigan's calls were not routed through the Pontiac Access tandem it would have no way to reach that end user. Accordingly, there is no basis for arguing that Ameritech has somehow forced Phone Michigan to bear unnecessary costs.

33. Intermedia Communications, Inc. ("ICI") raises an interconnection issue regarding "frame relay" traffic. ICI Br., pp. 3-5. Although ICI's claims largely relates to Ameritech's corporate structure, the important point from a Checklist perspective is that (1) ICI has not requested interconnection in Michigan, (2) frame relay is not a service for which interconnection is required under § 251(c)(1), and (3) in Illinois, where ICI has requested interconnection, the dispute over frame relay is being settled.

CHECKLIST ITEM (ii): UNBUNDLED NETWORK ELEMENTS

34. Most of the issues raised by commenters regarding unbundled elements are addressed under other checklist items. A few parties, however, have addressed matters falling within this "catch-all" checklist category.

35. MCI, for example, asserts that it is somehow improper for Ameritech to require requests for subloop unbundling to be made through the BFR process. Sanborn Aff., ¶ 21. The specific issue here is whether Ameritech should be required to unbundle the "feeder" and "distribution" portions for a loop as a standard offering in its interconnection agreements, something that MCI contends is "concededly technically feasible." Id.

36. MCI's argument has several basic flaws. To begin with, the Commission expressly declined AT&T's and MCI's request to require unbundling of subloop elements such as the feeder, feeder/distribution interface and distribution components of the loop in its First Report and Order, ¶ 391. The Commission found that the proponents of subloop unbundling did "not address certain technical issues raised by incumbent LECs concerning subloop unbundling." Id.

37. After this decision, MCI raised the same feeder/distribution issue in its arbitrations with Ameritech, but its position was rejected in every state, where the issue was uniformly assigned to the BFR process.[12/] The Michigan arbitration panel, for example, held that a BFR was necessary because "subloop unbundling (a) is not technically feasible in all instances, and (b) even where it is technically feasible, presents price and network reliability issues that cannot be resolved on a 'one size fits all' basis."[13/] Thus, MCI is again trying to relitigate an issue it has already lost five times. Moreover, MCI has yet to submit a BFR for subloop unbundling.

38. I should note that MCI provides no support for its claim that unbundling of feeder and distribution is "concededly technically feasible." And even if it were, my predecessor at AIIS,

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12/ MCI/Ameritech Michigan Decision of Arbitration Panel, M.P.S.C. Case No. U-11168, p. 30 (Nov. 26, 1996) (adopted in Dec. 20, 1996 final arbitration decision, p. 4) [Att. 9]; MCI/Ameritech Illinois Arbitration Decision, I.C.C. Docket No. 96 AB-006, pp. 31-32 (Dec. 17, 1996) [Att. 10]; MCI/Ameritech Indiana Arbitration Decision, I.U.R.C. Docket No. 40603-INT-01, p. 11 (Dec. 18, 1996) [Att. 11]; MCI/Ameritech Ohio Arbitration Decision, P.U.C.O. Case No. 96-888-TP-ARB, pp. 10-11 (Jan. 9, 1997) [Att. 12]; MCI/Ameritech Wisconsin Arbitration Decision, P.S.C.W. Docket Nos. 3258-MA-101 & 6720-MA-104, pp. 17-19 (Dec. 26, 1996) [Att. 13].

13/ AT&T/Ameritech Michigan Decision of Arbitration Panel, M.P.S.C. Case Nos. U-11151/52, p. 30 (Oct. 28, 1996) (adopted in Nov. 26, 1996 final arbitration decision, p. 4).

Gregory Dunny, provided a detailed explanation in the MCI arbitrations of the numerous problems associated with such unbundling and why it is not feasible to provide it on a standard basis.[14/] See also Bellcore, "Issues Concerning the Providing of Unbundled Subloop Elements by Ameritech," dated May 16, 1996 (describing technical difficulties in subloop unbundling). [Att. 15].

CHECKLIST ITEM (iii): POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

39. Although it concludes that Ameritech is satisfying this Checklist item, the MPSC is concerned that the information in my initial affidavit on carriers obtaining poles, ducts, conduits, and rights-of-way ("structure") was potentially misleading because some of the carriers (AT&T, MCI, and Climax) might not be using that structure to compete in the local exchange business. MPSC Br., pp. 35-36. While I regret any confusion, the information contained in my initial affidavit was intended to make it clear that Ameritech can and does furnish access to structure to a variety of requesting carriers. Also, although Ameritech cannot be sure how a competitor uses structure once it is furnished, it seems likely that carriers such as AT&T will use the structure it has obtained to compete with Ameritech for local service customers as it moves away from pure resale competition. I would also note that I disagree with the MPSC's statement (p. 36) that "only the provision to Brooks provides the utilization of poles, ducts, and rights-of-way that can satisfy this checklist item." This appears to adopt an "actually furnishing" test for

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[14/] See Rebuttal testimony of Gregory J. Dunny on Behalf of Ameritech Wisconsin, MCI/Ameritech Wisconsin Arbitration, P.S.C.W. Docket Nos. 6720-MA-104 & 3258-MA-101, pp. 2-8 [Att. 14].